FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH AT NAGPUR

Second Appeal No. 265/2006
(Omprakash Chironjilal Agrawal & another **VERSUS** Chandrakala Prabhudasji Kirad & 2 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr.Khamborkar, Advocate for the appellant.
Mr. Padhye & Mr. Deshpande, Advocate for the respondents.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 28th August, 2007.

Heard the learned counsel for the parties.

The appellants are the original defendant nos. 4 and 5 who claimed to have purchased a part of the suit property from defendant nos.1 to 3. A suit was filed by the respondent/plaintiff who claimed to be the adopted son of defendant no.1 and Shri Champalalji Ughade. Though the plaintiff was major at the time of adoption in the year 1959 and was also married, it was pleaded by the plaintiff that there was a custom in the Kirad community of adopting a major or a married person. The plaintiff, therefore, claimed partition and separate possession of his share in the properties left behind by Shri Champalalji Ughade.

The defendants denied the claim of the plaintiffs and pleaded that the deed of adoption dated 02.07.1959 was a nominal one and in fact,

the plaintiff was not the adopted son of defendant no.1 and Shri Champalalji Ughade. It was also denied that there was a custom in a Kirad community to adopt a major or a married person. The defendants then pleaded that the deed of adoption was brought into effect so as to save the lands from the clutches of the ceiling laws and the authorities.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and held that the plaintiff had proved that he was the adopted son of deceased Champalalji Ughade. The Court further held that the defendants had failed to prove that the status of the plaintiff as an adopted son was cancelled by the defendants. The Court consequently decreed the suit filed by the plaintiff to the extent of 5/12th share of the plaintiff in the suit property.

The judgments passed by the trial Court was challenged by the defendant in appeal. The first appellate Court confirmed the findings recorded by the trial Court.

Both the Courts held that the plaintiff has placed voluminous evidence on record to show that there was a custom in the Kirad community to adopt a major person or a married person. The Courts further held that the defendant no.1 failed to examine herself though she was the best

person who could tender evidence on the question of adoption of the plaintiff as the plaintiff pleaded that defendant no.1 Annapurnabai and Champalalji Ughade taken him in adoption in the year 1959. The Courts had rightly drawn an adverse inference against the defendant no.1 who could have been the best witness to depose on the question of adoption of the plaintiff. The question of applicability of the Banaras School of Hindu Law or the Bombay School of Hindu Law does not actually arise in this matter as it was not the case of either of the parties that the parties belong to a particular School of Hindu Law in the pleadings. It was also not the case of the parties in the pleadings that the Kirad community belong to Rajasthan or to the Central Province. In the absence of these pleadings, there could have been no occasion for the parties to tender evidence in this regard. The tendering of evidence in the absence of pleadings would not give rise to the issue as to whether the Banaras or the Bombay School of Hindu Law applies to adoption in this case. The plaintiff had approached the Court with a simple case that there was a custom in the Kirad community to adopt a major or a married person. The Courts have concurrently held that the plaintiff had proved the custom by producing various

registered adoption deeds and had also examined witnesses to prove the same.

The findings recorded by the Courts on the issue of adoption of the plaintiffs are pure findings of fact based on a proper appreciation of the material evidence on record. The findings do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE